

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION**

ALEJANDRO RODRIGUEZ D/B/A THE  
DOLPHIN MOTEL & RV PARK  
Plaintiff,

vs.

COLONY INSURANCE COMPANY,  
Defendant.

CIVIL ACTION NO.\_\_\_\_\_

**DEFENDANT COLONY INSURANCE COMPANY'S NOTICE OF REMOVAL**

Colony Insurance Company files this Notice of Removal pursuant to 28 U.S.C. Sections 1332, 1441, 1446, and Local Rule 81, and in support respectfully shows:

**I. PROCEDURAL HISTORY**

1. On October 31, 2016, Plaintiff Alejandro Rodriguez d/b/a The Dolphin Motel & RV Park filed his Original Petition in Cause No. C-4930-16-G in the 370<sup>th</sup> Judicial District Court of Hidalgo County, Texas (the State Court Action)<sup>1</sup>.
2. On February 23, 2017, Plaintiff improperly attempted to serve a copy of a Citation and Plaintiff's Original Petition on National Registered Agents, Inc. at 350 North Saint Paul Street, Suite 2900, Dallas, Texas 75201-4234 via the United States Postal Service.<sup>2</sup> But Plaintiff's policy contains a "Service of Suit" endorsement which stipulates that service of process upon Colony by the United States Postal Service should be made at General Counsel, Colony Insurance Company, Colony National Insurance Company, or Colony Specialty Insurance Company, Post Office Box 469011, San Antonio, Texas 78246.

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<sup>1</sup> Exhibit C-1, Plaintiff's Original Petition.

<sup>2</sup> Exhibit B, Deficient Return of Service.

3. On May 26, 2017, Colony filed its Original Answer, Special Exceptions, and Affirmative Defenses in the 370<sup>th</sup> District Court, Hidalgo County, Texas after learning that Plaintiff's Original Petition had been filed and of Plaintiff's deficient efforts to serve it. As of the present date, Colony has not been served with the lawsuit.

4. On May 26, 2017, Colony filed this Notice of Removal in the State Court Action.

5. A true and correct copy of all process, pleadings, and all orders filed and served in the State Court Action are filed with this Notice of Removal as required by 28 U.S.C. Section 1446(a). No orders have been signed in this case by the state judge. And pursuant to Southern District of Texas Local Rule 81 and Federal Rule of Civil Procedure 7.1, copies of the following documents are provided to the clerk for filing:

- (1) An index of matters being filed (Exhibit A)
- (2) All executed process in this case (Exhibit B);
- (3) Pleadings asserting causes of action and answers:
  - Exhibit C-1 – Plaintiff's Original Petition
  - Exhibit C-2 – Colony's Answer
- (4) The state court docket sheet (Exhibit D);
- (5) A list of all counsel of record, including addresses, telephone numbers, and parties represented (Exhibit E);

6. (6) Certificate of Interested Parties (Exhibit F).

## **II. BASIS OF REMOVAL**

7. Colony files this Notice of Removal pursuant to 28 U.S.C. Section 1441(b), which permits removal based on diversity jurisdiction. A federal court can exercise diversity jurisdiction if: (1) there is complete diversity among the parties; and (2) the amount in

controversy exceeds \$75,000.<sup>3</sup> This Notice of Removal is filed within the thirty-day statutory time period for removal. 28 U.S.C. § 1446(b).<sup>4</sup> Colony Insurance Company is a citizen and resident of the state of Virginia for diversity purposes.<sup>5</sup> Alejandro Rodriguez d/b/a The Dolphin Motel & RV Park is a Texas resident.<sup>6</sup> Based on both the face of Alejandro Rodriguez d/b/a The Dolphin Motel & RV Park's allegations and the actual citizenship of either entity, there is complete diversity among the parties under 28 U.S.C. Section 1441(b).

8. The amount in controversy in this case exceeds \$75,000.00. Colony satisfies its burden of meeting the amount-in-controversy requirement if it is facially apparent that Plaintiff's claims exceed the jurisdictional amount.<sup>7</sup> Alejandro Rodriguez d/b/a The Dolphin Motel & RV Park seeks monetary relief over \$200,000 but not more than \$1,000,000<sup>8</sup> which meets the \$75,000.00 minimum requirement.

9. Under 28 U.S.C. Section 1441(a), venue of the removed action is proper in the United States District Court for the Southern of Texas, McAllen Division, as the district and division embracing the county where the State Court Action is now pending.

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<sup>3</sup>28 U.S.C. § 1332(a).

<sup>4</sup> As Colony was never served with the Citation and Plaintiff's Original Petition as required under Texas law, the 30-day period of removal never began to run. See *Thompson v. Deutsche Bank Nat'l Trust Co.*, 775 F.3d 298, 304 (5th Cir. 2014).

<sup>5</sup> See *Royal Ins. Co. of Am. v. Quinn-L Capital Corp.*, 3 F.3d 877, 882 (5th Cir. 1993).

<sup>6</sup> Exhibit C-1, page 2, paragraph no. 3.

<sup>7</sup> See *Allen v. R&H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1995).

<sup>8</sup> Exhibit C-1, page 9, paragraph no. 40.

### III. CONCLUSION AND PRAYER

For the reasons stated in this Notice, this Court may exercise diversity jurisdiction over this lawsuit. Defendant Colony Insurance Company, as the removing party, will promptly give Plaintiff written notice of the filing of this Notice of Removal as required by 28 U.S.C. Section 1446(d). Colony will promptly file a copy of this Notice of Removal with the Clerk of the 370th Judicial District Court of Hidalgo County, Texas, where the State Court Action is currently pending.

WHEREFORE, Colony Insurance Company respectfully removes this case from the 370th Judicial District Court of Hidalgo County, Texas to the United States District Court for the Southern District of Texas, McAllen Division.

Respectfully submitted,

MARTIN, DISIERE, JEFFERSON & WISDOM,  
L.L.P.

By: /s/ David D. Disiere

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**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing document was electronically filed on May 26, 2017. Notice of this filing will be sent to all parties via operation of the Court's electronic filing system. For those parties whose counsel is not registered with the Court's electronic filing system, service will be made by email, facsimile, hand delivery, or certified mail, return receipt requested:

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*Alejandro Rodriguez d/b/a*  
*The Dolphin Motel & RV Park*

*Via Email*

*/s/ David D. Disiere*  
David D. Disiere